



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

C-44

July 2, 2007

Mr. Howard G. Borgstrom, Director
Business Operations Center
Office of the Chief Financial Officer
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585
Via e-mail as Word attachment

RE: RIN 1901-AB21

Dear Mr. Borgstrom:

Kindly convey the following comments concerning the above referenced proposed rules to the appropriate persons within your agency. UCS is committed to encouraging and supporting the research and development of novel sources of energy. We are concerned, however, that such encouragement and support achieve the purposes Congress intended with the enactment of the loan guarantees under Title XVII of Public Law 110-5. Upon reviewing your agency's proposed regulations, we believe that there remain certain serious problems and lapses in the proposal. In particular:

1. Granting exemptions to pre-applicants is a questionable practice. Although it is plain from the proposed rule that the intention in this regard is to provide fairness to the pool of pre-applicants, granting the exemption with respect to everything except the default, recordkeeping and audit requirements may result in a large number of accepted applications that do not conform to the rest of the regulations. Not only is this situation inherently unfair to applicants whose applications will fall under the entire set of regulations, it also may undermine the intention of Congress in providing the loan guarantee program to the extent that some exempt applicants who receive support may not be developing products that meet the "new or significantly improved technologies" test applied to all non-exempt applicants.
2. The test for "new or significantly improved technologies" should be objective. DOE needs to develop objective criteria to demarcate "new" or "significantly improved" technologies from the sprucing up and recycling of current technologies. The proposed rule approach relies upon subjective judgments concerning the definition rather than employing more objective, quantitative measures of novelty and significant improvement.

3. There should be specificity in the rules regarding subsidization of proposed technologies that require "scaling up" in order to achieve a viable energy production system.
4. There should be clarity in the regulations concerning the acceptability of providing loan guarantees for "new practices" in the area of distributed generation and co-generation.
5. There should be a mechanism in the process to assure that a few large companies do not end up with all of the loans. Small businesses need to be protected so that entrepreneurs with excellent ideas and little funding are not shut out of the process by less innovative but better funded large-scale enterprises.
6. There should be an open, public review process fully described in the regulations for the granting of the loan guarantees. The process must provide an opportunity for public participation and comment before subsidies are granted to applicants.
7. Given that the public is going to undertake the proverbial lion's share of the risk in most cases, the public should receive in return a percentage (proportional to that risk) of the patent rights and rights to transfer ownership to any and all technologies produced in reliance upon the loan guarantees.

Respectfully submitted:

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